

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  OFFICE OF CONSUMER ADVOCATE,  Complainant,  vs.  UKI COMMUNICATIONS, INC.,  Respondent.	DOCKET NO. FCU-02-27
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**ORDER DOCKETING FOR FORMAL PROCEEDING,  
DENYING MOTION TO DISMISS PETITION,  
AND REQUESTING STATUS REPORT**

(Issued January 8, 2004)

On December 31, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a request for formal complaint proceedings pursuant to Iowa Code § 476.103, asking that the Board review the proposed resolution issued in C-02-338, involving UKI Communications, Inc. (UKI), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings (which are a part of the record in this proceeding pursuant to 199 IAC 6.7), the events to date can be summarized as follows.

On October 3, 2002, Ms. Rebecca Jones called the Board alleging that her long distance telephone service was switched from Qwest to UKI without authorization. Board staff identified the matter as C-02-27 and, pursuant to Board rules, forwarded Ms. Jones's complaint to UKI for response.

UKI responded on October 22, 2002, stating that a sales agent for UKI spoke to Mr. Randy Berenger regarding a change in long distance telephone service to UKI. UKI asserted that it received Mr. Berenger's verbal consent to change long distance service and provided Board staff with a copy of the recording of Mr. Berenger's alleged consent. UKI further indicated that based upon the complaint, it had issued Ms. Jones a refund for \$18.14 to the customer's account for calls as well as the PIC change fee.

On October 30, 2002, Board staff forwarded a copy of the third-party verification to Ms. Jones, asking that she and Mr. Berenger review the recording and respond in writing by November 12, 2002. Ms. Jones provided a written response to the recording on November 7, 2002, wherein she alleged that the recording provided by UKI was "phony," recorded illegally, and edited to fit UKI's needs. Mr. Berenger provided a written response to the recording on November 10, 2002, wherein he admitted that the voice on the recording was his, but stated that the recording had been altered and that he had not participated in the conversation on the recording. Mr. Berenger maintained that he was never asked about transferring long distance

telephone service; rather the call he participated in was one regarding donations to a firemen's ball.

On November 19, 2002, Board staff forwarded the customers' written responses to UKI. UKI responded on December 4, 2002, by submitting a copy of the telemarketing sales script used by its telemarketers.

On December 17, 2002, Board staff issued a proposed resolution describing these events and proposing that the credits offered by UKI represented a fair resolution of the situation. No party other than Consumer Advocate has challenged the staff's proposed resolution.

On December 31, 2002, Consumer Advocate filed a request for formal proceeding, alleging that while Mr. Berenger admits that the voice on the third-party verification recording is his, the recording may have been altered to create a conversation that did not take place. Consumer Advocate suggests that the proposed resolution is not supported by the facts of the underlying complaint and that sufficient reasons exist to merit an investigation of the recording submitted by UKI. In addition, Consumer Advocate asserts that other slamming complaints received by Board staff have named UKI as the alleged violating company. Consumer Advocate requests that the Board docket this complaint for a formal proceeding and impose civil penalties on UKI.

On January 21, 2003, UKI filed a response to Consumer Advocate's request for formal proceeding as well as a motion to dismiss the request. In support of its

response and motion to dismiss, UKI states that it does not own, direct, or manage the third-party verification company which obtained Mr. Berenger's authorization to switch Ms. Jones's long distance service and, therefore, UKI would not be responsible for any possible alteration to the verification tape. UKI asserts that the allegations raised by Ms. Jones were either unsubstantiated or were proved incorrect by the underlying record and there are no grounds for additional or further investigation. In addition, UKI denies committing any other slams and asserts that the alleged violations are not in any way analogous to the facts of this complaint.

On January 28, 2003, Consumer Advocate filed a reply to UKI's response and motion to dismiss, arguing that Iowa Code § 476.103 does not require Consumer Advocate to show there are reasonable grounds for further investigation; if the company is given notice and opportunity for hearing and the Board finds that the anti-slamming statute has been violated, civil penalties are appropriate. Therefore, Consumer Advocate concludes, slamming violations should be processed under § 476.103 and civil penalties should be assessed.

The Board has reviewed the record to date as well as the additional slamming complaints made against UKI and finds that there is sufficient information to warrant further investigation in this matter. The Board recognizes that there has not been any action in this matter for some time. Therefore, the Board will delay establishing a procedural schedule until January 26, 2004, and will request that the parties submit a report to the Board regarding the status of this matter on or before that date.

**IT IS THEREFORE ORDERED:**

1. The "Petition for Proceeding to Impose Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on December 31, 2002, identified as Docket No. FCU-02-27, is granted and docketed for formal proceeding.
2. The motion to dismiss the petition filed by UKI Communications, Inc., on January 21, 2003, is denied.
3. The parties shall submit a status report to the Board on or before January 26, 2004, as described in this order.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 8<sup>th</sup> day of January, 2004.